



Federal Communications Commission  
Washington, D.C. 20554

February 26, 2010

**DA 10-342**

Christopher D. Imlay  
Booth, Freret, Imlay & Tepper, P.C.  
14356 Cape May Road  
Silver Spring, MD 20904-6011

Re: Request for Declaratory Ruling filed February 25, 2005, supplemented May 5, 2006

Dear Mr. Imlay:

This is in response to the Request for Declaratory Ruling (Request) that you filed on February 25, 2005 on behalf of ARRL, the National Association for Amateur Radio (ARRL), and supplemented on May 5, 2006. ARRL seeks a declaratory ruling that Section 877.27 of the Florida Criminal Statutes and Section C.2C:33-23.1 of the New Jersey Statutes, which make it a felony to make a radio transmission without Commission authorization or to interfere with a licensed public or commercial radio station, are preempted by federal law. ARRL states that the statutes were enacted to address unlicensed “pirate” broadcasting facilities, but ARRL is concerned that it could be applied to Commission-licensed amateur radio stations. We note that the Florida legislation has now been in effect for over five years and the New Jersey legislation has been in effect for over four years, and we have received no reports of any amateur operators being prosecuted or threatened with prosecution under either statute. Given our broad discretion in determining whether to grant a petition for declaratory ruling, we decline to address the Request, as it does not currently appear that a declaratory ruling is necessary to “terminat[e] a controversy or remov[e] uncertainty”<sup>1</sup> with respect to ARRL’s concerns.<sup>2</sup> ARRL may file a new petition for declaratory ruling in the event of changed circumstances.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), and Section 1.2 of the Commission’s Rules, 47 C.F.R. § 1.2, the request for declaratory ruling submitted by ARRL, the National Association for Amateur Radio on February 25, 2005 IS DENIED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission’s Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>1</sup> 47 C.F.R. § 1.2.

<sup>2</sup> See, e.g., Petition for Declaratory Ruling on Issues Contained in Thorpe v. GTE, *Memorandum Opinion and Order*, 23 FCC Rcd 6371, 6387 ¶ 29 (2008) (citing *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973)).